

EXHIBIT 3

In The Matter Of:

CHARLIE THORNTON
v.
FEDEX GROUND PACKAGE SYSTEM

NO. 2:05-CV-00656-DRB

KENT GASTINEAU
April 12, 2006



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CHARLIE THORNTON
FEDEX GROUND PACKAGE SYSTEM

KENT GASTINEAU
April 12, 2006

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO: 2:05-CV-00656-DRB

CHARLIE THORNTON,
Plaintiff,

vs.

FEDEX GROUND PACKAGE SYSTEM, INC.,
Defendant.

DEPOSITION
OF
KENT GASTINEAU
12TH DAY OF APRIL, 2006

TAKEN BEFORE: Gary N. Morgan
Registered Professional
Reporter and Notary Public

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. K. Anderson Nelms
Attorney at Law
Law Offices of Jay Lewis, LLC
847 South McDonough Street
P. O. Box 5059
Montgomery, Alabama 36104

FOR THE DEFENDANT:

Mr. Robert K. Spotswood
Attorney at Law
Law Offices of Robert K. Spotswood
Suite 940
2100 Third Avenue North
Birmingham, Alabama 35203

OTHERS PRESENT:

Mr. Charlie Thornton

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S T I P U L A T I O N

IT IS STIPULATED AND AGREED,
by and between the parties, through their
respective counsel, that the deposition
of KENT GASTINEAU may be taken before
Gary N. Morgan, Commissioner, Registered
Professional Reporter and Notary Public,
State at Large;

That the signature to and
reading of the deposition by the witness
is waived, the deposition to have the
same force and effect as if full
compliance had been had with all laws and
rules of Court relating to the taking of
depositions;

That it shall not be necessary
for any objections to be made by counsel
to any questions, except as to form or
leading questions, and that counsel for
the parties may make objections and
assign grounds at the time of trial, or
at the time said deposition is offered in
evidence, or prior thereto.

I N D E X

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1 I, Gary N. Morgan, a
2 Registered Professional Reporter of
3 Birmingham, Alabama, and a Notary Public
4 for the State of Alabama at Large, acting
5 as Commissioner, certify that on this
6 date, as provided by the Federal Rules of
7 Civil Procedure of the United States
8 District Court, and the foregoing
9 stipulation of counsel, there came before
10 me at 847 South McDonough Street,
11 Montgomery, Alabama, on the 12th day of
12 April, 2006, commencing at 2:13 p.m.,
13 KENT GASTINEAU, witness in the above
14 cause, for oral examination, whereupon
15 the following proceedings were had:

16
17 KENT GASTINEAU,
18 being first duly sworn, was examined and
19 testified as follows:

20
21 EXAMINATION BY MR. NELMS:

22 Q. State your name for the
23 record, please.

1 issues, and if you, at any time, want to
2 stop and talk to Mr. Spotswood who's here
3 today, you're more than welcome to do
4 that. It has no specific meaning, won't
5 be held against you in any way.

6 And I'm just going to ask you
7 some questions about the procedure, your
8 history with FedEx, the procedure of how
9 things are done at FedEx and some of your
10 history and recollections as they regard
11 Charlie Thornton.

12 So, first of all, how long
13 have you been -- where are you working
14 today?

15 A. I currently work at FedEx Home
16 Delivery here in Montgomery, Alabama.

17 Q. Okay.

18 A. And I've been here since
19 February of last year.

20 Q. 2005?

21 A. 2005, yes, sir.

22 Q. Okay. And is that a division
23 of FedEx Ground Package System, Inc.?

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1 A. My name is David Kent
2 Gastineau.

3 Q. Okay. And spell your last
4 name for us?

5 A. G-A-S-T-I-N-E-A-U.

6 Q. And we've already met, Mr.
7 Gastineau. My name is Andy Nelms. I
8 represent Charlie Thornton in this
9 matter. I know you were here for Mr.
10 Thornton's deposition, most of it. And
11 you basically understand how the
12 deposition process works?

13 A. Yes, sir.

14 Q. Okay. I'm not going to bore
15 you with the preliminaries. Let's just
16 jump right into it. Have you ever been
17 deposed before?

18 A. No, sir.

19 Q. Okay. Well, just in case you
20 don't remember, you're welcome to stop
21 anytime you want to. If you've got any
22 questions you want to ask me, you can ask
23 me to clarify or readdress you on certain

1 A. Yes.

2 Q. Okay. And do you work for any
3 other divisions of Federal Express?

4 A. No, sir.

5 Q. Okay. So, you are strictly
6 FedEx Home Delivery?

7 A. Yes.

8 Q. Okay. And have you pretty
9 much been in the same job since February
10 of 2005?

11 A. Yes, sir.

12 Q. Okay. And how long have you
13 been with the entire Federal Express
14 system?

15 A. I just had my five-year
16 anniversary February 5th of this year.

17 Q. All right.

18 A. So, I -- be -- before I moved
19 down here, I was with the company for
20 four years.

21 Q. All right.

22 A. So, now, I'm five.

23 Q. Good. And where did you work

2 (Pages 5 to 8)

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1 within the Federal Express family before
2 you came to Montgomery?

3 **A.** I worked for FedEx Home
4 Delivery in Chattanooga, Tennessee. I
5 started off as the service manager, and I
6 stayed there for four years until the
7 position opened up here for me to take
8 over.

9 **Q.** Okay. And what does the
10 service manager do?

11 **A.** A service manager --
12 terminal -- we were a standalone location
13 at the Chattanooga location. We had a
14 senior manager who was -- oversaw all
15 operations of the terminal.

16 The service manager -- it just
17 depends how large the terminal is.
18 Sometimes there's one service manager;
19 sometimes there's a full-time service
20 manager and a part-time; and sometimes
21 there's two full-time service managers.
22 We just had one full-time. For many
23 years, I was the only service manager.

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1 had a -- a senior manager, and -- and one
2 of the service managers were in there so
3 that we could answer any questions that
4 the contractor, possible driver, would
5 have. So, that's what -- what a service
6 manager did.

7 **Q.** Okay. And then, the position
8 came open in Montgomery, and you were
9 transferred to Montgomery, and that was a
10 promotion for you?

11 **A.** Yes, sir.

12 **Q.** Okay. And -- and, I'm sorry.
13 What is the title you hold now?

14 **A.** Operations manager.

15 **Q.** I'm sorry. Operations
16 manager. And what do you do as
17 operations manager?

18 **A.** Okay. A operations manager is
19 one step up from a service manager. I'm
20 basically -- this is -- the Montgomery
21 terminal is a colocation. We have both
22 Ground and Home Delivery in the same
23 facility.

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1 Then, we were -- then, we had a part-time
2 service manager, and then, we had two
3 full-time service managers.

4 Primarily, my job was the
5 inbound sort and to go up -- out with the
6 contractors for customer service rides.
7 I would hire package handlers; interview
8 package handlers; find new addresses; new
9 streets; update the -- the VRP map; make
10 sure everybody had their DOT physicals;
11 check in contractors' files; check the
12 employee files. A lot of times, I would
13 go -- have info sessions for possible
14 contractors and driver candidates,
15 although I didn't do that many of them
16 because my -- I primarily worked the
17 inbound sort and, then, I did rides while
18 the senior manager -- he oversaw the work
19 and -- hiring of new contractor drivers
20 and into -- into -- and in the
21 interviews.

22 When we actually did the
23 interviews for new drivers, we usually

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1 I'm in charge -- an operations
2 manager is in charge of everything that
3 deals with Home Delivery. So, basically,
4 I'm just like a senior manager. Just
5 like Stan Trott was the senior manager
6 for Ground, I'm the manager for Home
7 Delivery. However, I -- I'm not
8 responsible to make sure that the rent's
9 paid, the electricity's paid, the water's
10 paid. That's all covered through the
11 Ground senior manager since we are a
12 colocation. So, certain things I don't
13 have to cover. The next step up from
14 where I'm at now would be a senior --
15 senior manager at a standalone location.

16 **Q.** Okay. You said Montgomery is
17 a cull --

18 **A.** Colocation.

19 **Q.** Colocation. Oh, I'm sorry. I
20 didn't hear that part. All right.

21 And think back, if you will,
22 to sometime early in 2005, and tell me if
23 you can recall when the first time you

3 (Pages 9 to 12)

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1 met Charlie Thornton was.
2 **A.** On the first day that I came
3 to the terminal, they -- they promoted me
4 on February 1st or they backdated it.
5 They offered me the promotion, I think,
6 the second or third of February, but they
7 promoted me as of February 1st. I came
8 down here the -- Charlie had just
9 finished the class, training class in
10 Birmingham. And so, when I came down, I
11 met -- I was meeting all the new drivers,
12 all the new contractors, all the package
13 handlers. I met the service manager that
14 was there at the time that I had never
15 met before.
16 **Q.** Who was that?
17 **A.** At the time, it was Jermaine
18 Wilson.
19 **Q.** Okay.
20 **A.** And then, Joe McConnell from
21 Birmingham -- he knew most of the people
22 already. He had been the operations
23 manager at one time down here, and he met

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1 me down here, and he showed me where
2 everything was, introduced me to Charlie,
3 and -- so, that's where we first met the
4 first day was Charlie's first day at the
5 terminal.
6 **Q.** What did Joe McConnell do at
7 the time -- you say he used to be the
8 operation manager, and then, he went to
9 Birmingham. What did he do in Birmingham
10 when you first came down?
11 **A.** In Birmingham, he was the
12 senior manager. He had been there as
13 senior manager in Birmingham for a while.
14 He got promoted from operations manager
15 to senior manager, and they let Stan
16 Trott be in charge of both Ground and
17 Home Delivery. They didn't have a
18 operations manager for --
19 **Q.** Okay.
20 **A.** -- Home Delivery at the time.
21 **Q.** Okay. At the time that you
22 first met Charlie Thornton, what did you
23 understand his role or capacity was there

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1 at FedEx?
2 **A.** He had just finished the
3 training class. So, whenever we had --
4 he went through a two-week training
5 class. Whenever he had the two-week
6 training class, the very first day after
7 that, they ride with the contractor or --
8 all day, and then, they have to do five
9 more customer service rides where the
10 service manager or the operations manager
11 or some manager would ride with the
12 driver; in other words, Charlie, to make
13 sure that he understood how to properly
14 deliver packages; how to use the scanner;
15 make sure that he was a safe driver; and
16 we had a checklist to make sure that
17 he -- everything was going -- being done
18 correctly.
19 **Q.** Okay. To the best of your
20 knowledge, did he pass all of these
21 tests?
22 **A.** Yes.
23 **Q.** Okay. And that was March?

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1 **A.** That was February.
2 **Q.** Okay. February of 2000 --
3 **A.** The second or third week of
4 February.
5 **Q.** Okay. And did you have
6 occasion to meet or associate with
7 Charlie in March of 2005?
8 **A.** Yes, I did. When I -- getting
9 back to February, he -- the first week
10 that he was there, the first week that I
11 was there, he was doing the training
12 rides, and I was learning everything new
13 to the area. I had never been to
14 Montgomery before.
15 The terminal had not done any
16 driver release audits since -- for the
17 fiscal year, and the fiscal year ended in
18 May. So, I had to -- I was doing driver
19 release audits right away. Joe was
20 helping me do some driver release audits.
21 So, I wasn't spending any time at the
22 terminal. I was having to learn all of
23 the areas really quick, so I could do the

4 (Pages 13 to 16)

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1 driver release audit.
2 The driver release audit is
3 where we go behind a driver to make sure
4 that they're delivering packages
5 correctly; they're being polite to
6 customers, and they're answering
7 customers' needs; leaving delivery
8 notices; putting in -- packages in
9 plastic bags, so --

10 **Q.** Is this -- excuse me. Is this
11 all drivers or just the contract drivers?

12 **A.** This is all drivers including
13 the temp drivers. We got to make sure
14 that everybody's delivering packages
15 correctly. Generally, we don't -- we
16 don't have to have driver release audits
17 done on temp drivers. We have to have
18 driver release audits done on the -- on
19 the contracted routes.

20 **Q.** Okay.

21 **A.** And sometimes the contractors
22 will run supplementals. We also do
23 driver release audits on them just to

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1 make sure that they're adhering to the
2 drive -- to the driver -- to releasing
3 packages correctly because the contractor
4 is ultimately responsible to make sure
5 that package gets delivered.

6 **Q.** Okay. Was a driver audit done
7 on Charlie Thornton?

8 **A.** No.

9 **Q.** Okay. Why?

10 **A.** That was my first week there,
11 and none -- none of the -- like I said,
12 each of the contractor routes have to
13 have two driver release audits done per
14 fiscal year.

15 **Q.** Yes.

16 **A.** Well, for -- at the time,
17 there was four per fiscal year, and none
18 had been done. So, I had to get the
19 terminal caught up on its speed to get
20 ready for the audit.

21 **Q.** Okay.

22 **A.** So, there wasn't a need to do
23 one on the temp driver. Then, he

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1 didn't -- he was being trained. There
2 was someone riding with him initially.
3 He wasn't going out by himself. So, it
4 wouldn't been -- made any sense to do a
5 driver release audit on Charlie.

6 Right after he had that
7 initial training, I was there at the
8 terminal for part of a week afterwards.
9 Then, we had a regional senior manager
10 meeting with -- which I went to in
11 Chattanooga. In the meantime, the senior
12 manager in Chattanooga, my immediate
13 boss, my -- who -- my mentor, he had
14 quit, and they asked me to work in
15 Chattanooga for a couple of weeks to
16 make -- to oversee the -- everything
17 there, since I knew where everything was,
18 to train the new manager coming in.

19 **Q.** Who was the one that left, the
20 manager that left?

21 **A.** In Chattanooga?

22 **Q.** Yes, sir.

23 **A.** Mike Boley.

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1 **Q.** Okay. So, you had to go --
2 not only did you have your
3 responsibilities in Montgomery, but you
4 had to go to Chattanooga and take --

5 **A.** Right.

6 **Q.** -- on some responsibilities?

7 **A.** Right. So --

8 **Q.** I'm sorry. And that was in
9 March?

10 **A.** Yeah, the last two days of
11 February and the first week and a half of
12 March.

13 **Q.** Okay.

14 **A.** And it was my understanding
15 that they would probably keep me there
16 till Apr -- probably -- looked like till
17 April, so they could find a new senior
18 manager there. However, the -- the
19 director of the region, he decided to
20 make Jeff White, the regional engineer,
21 take over the terminal till a senior
22 manager could start, so -- they --
23 because they needed me back in

5 (Pages 17 to 20)

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1 Montgomery. So, I -- about the second
2 week -- second to -- latter part of the
3 second week of March, I came back down
4 here.

5 **Q.** Did Stan Trott stay on to help
6 in Montgomery during part of this time?

7 **A.** Stan Trott was here, yes.

8 **And**, in the limited capacity, he was --
9 he had built up a lot of vacation time.
10 He was getting ready to retire, and he --
11 he wasn't there all the time. He
12 would -- you know, he was working the
13 retirement hours.

14 **Q.** I understand. All right. And
15 so, that takes us up to basically the
16 first part of April?

17 **A.** Right, or the latter part of
18 March. Then, I -- I met Charlie a -- a
19 few times. He came in. I took him out
20 to lunch. We discussed plans, and then,
21 we were having problems with his files
22 not being all complete because I had
23 never saw his file initially. It was

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1 something that Stan Trott had put
2 together. Then, it went -- then Joe
3 McConnell had it. All these people had
4 it. I had never seen it. So, I had to
5 try -- I was trying to get it -- his file
6 approved. So, I had to get -- try to get
7 his file and pieces here, pieces there,
8 get it put back together to -- to get him
9 in the system to -- to get him squared
10 away. It took a while to do that. In
11 the meantime, I had other problems with
12 other drivers, and he wasn't the only
13 person there. So, I mean, I -- I had my
14 hands full.

15 **Q.** I understand. You said his
16 file was not "complete." Can you be more
17 specific what elements of his file were
18 not complete?

19 **A.** I don't recall what all wasn't
20 complete. It -- the regional safety
21 manager has to approve the files, and if
22 something's missing, he won't approve it.
23 So, I had to find out what was missing,

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1 and right now, I can't remember what was
2 missing. Like I said, his file was
3 scattered all over the place before I got
4 there. I mean, it -- it was just thrown
5 together real quick, and then, the -- the
6 regional safety manager, you know, if
7 it's not in order, he -- he won't -- he
8 won't approve it.

9 So, finally, I got his file,
10 got it put together and -- and sent to
11 the office. Then, it just took time. It
12 had to go -- from the regional safety
13 manager, it had to go to Omar Newman,
14 back to the regional safety manager.

15 **Q.** And, I'm sorry. Who's the
16 regional safety manager again?

17 **A.** At the time -- I'm trying to
18 think. It -- the gentleman who was the
19 regional safety manager at the time is no
20 longer with the company, and --

21 **Q.** Where was he located?

22 **A.** The regional -- regional
23 office is in Atlanta, Georgia.

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1 **Q.** Okay. All right.

2 **A.** But I -- I -- I worked with
3 him for many years, but I can't remember
4 his name.

5 **Q.** That's okay. That's okay.
6 You know, I am the world's worst at
7 names. I tell you, I have to stop and
8 think sometimes of my own.

9 **A.** Ask me where an address is and
10 I'll tell you which way to go, but don't
11 ask me for a person's name.

12 **Q.** I understand. I understand.
13 Okay. Well, tell me what would be
14 typically necessary to make a file
15 complete; what elements would go into
16 that file to make it complete.

17 **MR. SPOTSWOOD:** Let me ask for
18 clarification of the question. Complete
19 for what purpose?

20 **Q.** Well, let's ask that. You
21 were telling us that the file was not
22 complete. What is the purpose in
23 completing the file?

6 (Pages 21 to 24)

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1 **A.** There's a -- there's a
2 checklist. Everything has to be in that
3 file, and, you know, it has -- it has to
4 have the information sheet that they
5 filled out, which is basically similar to
6 an application. It has to have a -- a
7 background check has to be done on -- DOT
8 physical, credit check, drug test. If
9 they've taken the class or not, they --
10 they had to have the driver's test.
11 There's a -- should be a copy of
12 everything that was in his file here.
13 **Q.** Okay.
14 **A.** So --
15 **Q.** Well, let me ask you: To the
16 best of your knowledge, at the time, had
17 Charlie Thornton passed his drug test?
18 **A.** Yes.
19 **Q.** Had he taken his DOT physical?
20 **A.** Yes, we paid for it, although
21 contractors are supposed to pay for their
22 own, but for some reason, Stan Trott
23 paid -- paid for it, so --

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1 **Q.** But did Charlie Thornton pass
2 the physical?
3 **A.** Yes.
4 **Q.** Okay. Did he take the
5 training test in Birmingham?
6 **A.** He took the training class in
7 Birmingham, yes.
8 **Q.** Okay. Was that satisfactory?
9 Was that completed?
10 **A.** He -- yes.
11 **Q.** Okay. What else did you name?
12 The credit check. Was that a problem?
13 **A.** No.
14 **Q.** Okay. Can you think of
15 anything that would go into completing
16 this file that Charlie Thornton himself
17 did not do that was required of him?
18 **A.** Not to my knowledge at this
19 time. I -- I don't recall. I just note
20 that there were things missing in his
21 file, and I had to get the file because I
22 didn't know at the time what was missing.
23 **A.** As soon as I got his file, I got

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1 everything back together. I think he
2 was -- might have been missing a driver's
3 license or -- or something like that, or
4 it might have been missing his DOT
5 physical card, but I don't recall. I got
6 a copy, got it in his file, sent it back
7 out for approval.
8 **Q.** In about what time frame?
9 What date is this?
10 **A.** March. Sometime in March.
11 **Q.** Okay. And when you say you
12 "sent it," you sent it to Atlanta, then?
13 **A.** Yes, to the regional safety
14 manager.
15 **Q.** Okay. And --
16 **A.** And the regional safety
17 manager's name was Eric -- but I -- his
18 last name --
19 **Q.** Eric something?
20 **A.** Yeah.
21 **Q.** Okay. Not a problem. All
22 right. And so, sometime in March, then,
23 you got Charlie Thornton's complete file

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1 to the safety manager. And what was the
2 purpose of getting the complete file to
3 the safety manager?
4 **A.** Well, I mean, once this -- the
5 file has to get signed off. For anybody
6 who's going to be a potential contractor,
7 has to get signed off by the safety
8 manager. He has -- he -- he has -- he
9 has to approve every single driver and
10 contractor.
11 So, you know, he'll look at it
12 and see is this someone that we want to
13 potentially be a contractor with, or --
14 or is he qualified to be a driver? He --
15 he is in charge of safety. Then, if he
16 thinks the gentleman doesn't have a safe
17 record, he -- he cannot sign it.
18 **A.** And, from there, it would go
19 to the director and the regional manager,
20 and the director and regional manager
21 have to sign off on this file too.
22 **Q.** Okay. To the best of your
23 knowledge, did Eric or any regional

7 (Pages 25 to 28)

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1 safety manager ever sign off on Charles?
2 **A.** Yes.
3 **Q.** He did?
4 **A.** Yes.
5 **Q.** Okay. And, to the best of
6 your knowledge, did it, then, get
7 forwarded to the regional director?
8 **A.** Yes.
9 **Q.** Okay. To the best of your
10 knowledge, did the regional director ever
11 sign off on Charlie?
12 **A.** Yes. Otherwise, he would
13 never have gone through the system as far
14 as he did.
15 **Q.** Okay. And to the best of your
16 knowledge, who approves the sale of a
17 FedEx truck to a potential contractor?
18 **A.** Well, there -- it goes through
19 many processes. We were just talking
20 about his file getting approved. That
21 had -- that's -- getting a truck is
22 completely different.
23 **Q.** Well, tell me how that process

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1 worked.
2 **A.** Well, if there's an open route
3 and engineering approved for a new route,
4 then -- I'm trying to think. You have to
5 have a -- someone who's a potential
6 contractor candidate. You have to put in
7 a work area request form, and the
8 regional engineer has to put in a work
9 area request form. A regional engineer
10 has to -- a lot of paperwork to do ahead
11 of time in order to get another route put
12 in the terminal.
13 Once all of that's squared
14 away, then, it has -- then, it comes
15 back. They have to provide financing
16 on -- if -- if the individual has
17 financing on -- and the regional engineer
18 approves for a new route, then, it has to
19 go through engineering. Engineering
20 has -- they have to sign off for a new
21 route. Once it goes from engineering, it
22 goes to the maintenance safety
23 department. They have to approve it, and

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1 once they do that, they issue a vehicle
2 number, and once the vehicle number is
3 issued, then, the potential con --
4 contractor candidate has to get the --
5 whoever they're -- doing their financing
6 has to pay for the vehicle.
7 FedEx will not release the
8 vehicle until it is paid for. And most
9 finance -- if the -- if the individual's
10 doing their own financing, most financial
11 institutes won't release -- won't pay for
12 a vehicle to approve insurance. The
13 insurance has to be signed off. So,
14 financing -- once all that is done, then,
15 they'll release the vehicle.
16 **Q.** And to the best of your
17 knowledge, was a vehicle released to
18 Charlie Thornton?
19 **A.** Yes.
20 **Q.** Okay. So, what route had been
21 approved for Charlie Thornton?
22 **A.** Well, it wasn't so much a
23 route for Charlie Thornton. We were --

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1 at the time when I came to the terminal,
2 there was an abandoned route, and they
3 were trying to fulfill -- to get that
4 route filled, and I was told by numerous
5 people that we -- we needed a second
6 route besides that.
7 So, I was trying to get
8 approval for a second route. Not all the
9 paperwork was turned in right away on the
10 abandoned route, and that was way before
11 I ever got there. And so, a lot of
12 paperwork had to be redone and
13 resubmitted for the abandoned route. The
14 person who abandoned the route was still
15 getting the monthly CCS bonus checks in
16 February and March, and he abandoned the
17 route way back in December. He should
18 never have gotten a -- for not doing
19 anything for the month of January,
20 February and March.
21 **Q.** Right.
22 **A.** And that was because not all
23 the paperwork was turned in correctly.

8 (Pages 29 to 32)

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1 So, I had to get all of that squared
2 away, and -- I was -- because certain
3 paperwork was supposed to be turned in
4 right away within two weeks or at least a
5 month after the -- an abandoned route,
6 and I was turning it in three months
7 later. I was having problems getting
8 approval in that -- all that. At the
9 same time, I was trying to get approval
10 for a second route. And --

11 **Q.** Just so I'll know, the
12 abandoned route, how do you identify
13 that? What is it called?

14 **A.** We call it an abandoned route.

15 **Q.** I know, but --

16 **A.** Forest McKinley had a route,
17 the McCrary route, that's in 36116 zip
18 code, and he also did Troy, and he -- he
19 gave up his route. So, we were trying to
20 fill it up but not all the paperwork was
21 filled out correctly.

22 **Q.** Okay. So, was that the route
23 that was supposed to go to Charlie

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1 Thornton?

2 **MR. SPOTSWOOD:** Excuse me. I
3 object to the form. I don't think that's
4 a fair question, but --

5 **Q.** Well, you testified earlier
6 that engineering had to approve that --
7 that the district manager had to approve;
8 that the safety manager had to approve;
9 and that there would be a specific route
10 assigned before a truck number would be
11 released, right?

12 **A.** The district manager has to
13 approve the contractor file for -- for a
14 person to become a driver or contractor.
15 He doesn't have to approve for a new
16 route. The regional engineer has to --
17 to put it in motion. I was trying to get
18 both -- the abandoned route reapproved
19 because it was an abandoned route. It
20 should have been real easy to get that
21 filled up. But because paper -- not all
22 the paperwork was turned in on a timely
23 basis when it was abandoned, I was

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1 running into problems getting that route
2 filled. At the time, I was trying to get
3 a second route approved.

4 **Q.** Where would that second route
5 have been?

6 **A.** Wherever I deemed necessary
7 that we had enough packages to -- to have
8 a second route.

9 **Q.** Did you have a particular area
10 in mind?

11 **A.** I had a particular area in
12 mind that my -- my idea was towards --
13 the Wetumpka area would have been a
14 second route.

15 **Q.** Okay. I'm sorry. I
16 interrupted you. You were trying to get
17 the paperwork approved for the abandoned
18 route.

19 **A.** And -- for -- for both the
20 abandoned route and the second route and
21 I was having problems. At the time, the
22 regional manager -- the -- the regional
23 district manager that we had was J. D.

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1 Peoples, and he -- he was having problems
2 also trying to get anything approved
3 because of the problems we had with the
4 abandoned route. He was having problems
5 getting it approved.

6 He left the company towards
7 the end of March, and then, Dan Huseman,
8 which was the regional director for the
9 Carolina region, he came and ran the
10 region for a couple of weeks. And he
11 asked if anybody was having any problems,
12 and I mentioned that I was having
13 problems getting these routes approved.
14 **And --** and up to that time, I was running
15 into -- I was having a lot of problems
16 getting anything approved, and then, all
17 of a sudden, I had two vehicle numbers
18 issued, one for Isaac Scott, one for
19 Charlie Thornton. And I went on the
20 presumption that I had two routes
21 approved, and I went -- went on from
22 there.

23 **Q.** Okay. Did you have any

9 (Pages 33 to 36)

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1 conversations with Charlie Thornton in
2 April of 2005 regarding the routing?

3 A. Yes, I did.

4 Q. Okay. Tell me, if you can
5 recall, what specifically did you discuss
6 with Charlie?

7 A. Well, there -- there were
8 quite a few conversations. Initially, I
9 did not think I was going to get approval
10 for two routes. It was just going to be
11 one route, and Isaac Scott was having
12 problems getting financing. So, I told
13 him that I may just be able to get one
14 route, and I asked him if he was
15 interested in the Troy route.

16 Q. Isaac. You asked Isaac --

17 A. I -- I asked Charlie if he was
18 interested in getting the Troy route
19 because Isaac was having problems with
20 financing.

21 Q. Oh, I'm sorry. Okay. I
22 misunderstood you. Okay.

23 A. And initially, Charlie said he

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1 was not interested in the Troy route.
2 So -- and he wanted to wait till the
3 Wetumpka route would open up.

4 Q. And this is in April?

5 A. This is in April.

6 Q. All right.

7 A. Then, he was -- he was in a
8 rush, as much as everybody else, trying
9 to get everything finally approved to get
10 a route, and then, he came back and said
11 that he would be interested to get the
12 Troy route.

13 Q. All right.

14 A. And, so --

15 Q. Again, this is in April?

16 A. This is in April. So, I knew
17 I had a -- I knew I could -- you know, I
18 had someone to do the Troy route. When I
19 had both vehicles' numbers issued, I
20 assumed I had two routes. So, I knew
21 that Isaac had been running the Troy
22 route, and so, I knew -- and he -- he
23 struggled when he did the route at first,

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1 and he did real well.

2 So, when Char -- when Isaac
3 was out sick, Charlie came and ran part
4 of the route and had -- Jermaine Wilson
5 rode with him, and he tried to do some of
6 the route, and he worked hard at it, but
7 I knew that he struggled real hard with
8 it. So, I knew I wanted to -- whoever
9 would do the route the best in that area,
10 that's who I wanted, and Charlie lived
11 in -- close to Wetumpka, and if I had two
12 routes, that's where I wanted to put
13 Charlie.

14 Q. Okay. Now, during the times
15 that Charlie ran the -- Charlie Thornton
16 ran the Troy route, he had Jermaine with
17 him?

18 A. Most the time. I think all
19 but one time. He didn't run the -- he
20 didn't go down there very often. I think
21 there was one day he ran by himself. He
22 did part of the route, and I think
23 Jermaine did part of the route or --

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1 well, this might -- I think this was back
2 in March when this -- when this happened,
3 and -- but I don't recall exactly when.

4 MR. SPOTSWOOD: I need to take
5 a break.

6 MR. NELMS: Sure. Yeah.

7 We'll just go off the record a minute.

8 (Said deposition was in recess
9 at 2:42 p.m. until 2:43 p.m.,
10 after which the following
11 occurred:)

12 Q. (BY MR. NELMS:) Okay. So,
13 basically, what you're saying is, that if
14 you had the two routes and Wetumpka was
15 one them, you would rather have Charlie
16 in the Wetumpka route, am I correct?

17 A. Since he said he was familiar
18 with that area, yes, and then, Isaac had
19 already been doing the Troy route, and he
20 was familiar with that area. If I would
21 have had to put someone else down in
22 Troy, that would have been -- I had to
23 spend a lot of time with Isaac. I had to

10 (Pages 37 to 40)

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1 do -- after Jermaine -- Jermaine left and
2 had -- was transferred to Atlanta shortly
3 after I got back to the terminal. So, I
4 didn't have another service manager. It
5 was just me.
6 So, I had to do a lot of rides
7 with Isaac, training him how to read a
8 map correctly, and I just as soon have
9 someone who, if I have already trained to
10 do that area, do that area. Charlie said
11 he knew Wetumpka, all of Elmore County.
12 And so, I talked to Charlie, that -- if
13 that route area was approved, and, you
14 know, I thought I had two vehicle
15 numbers. I wanted to -- wanted to put
16 him out in that area.
17 Q. Makes sense. So, this is
18 April. Did you learn in April that you
19 did not have two routes?
20 A. No, I did not.
21 Q. Okay. And then, we go into
22 May, and tell me what happened between
23 you and Charlie in May of 2005.

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1 A. Well, towards the beginning of
2 the month of May, Charlie's vehicle had
3 came. Isaac's vehicle had come towards
4 the latter part of April. We went and
5 filled that -- we went on-line and
6 printed out his contract. He read the
7 contract and signed it.
8 When Charlie's vehicle came,
9 we inspected the vehicle. Then, we went
10 inside the terminal to go print out his
11 contract, and I was having problems
12 printing it out. And sometimes the
13 system is just down, and you just can't
14 do anything. So, I thought that's what
15 the problem was. So, he had left, and
16 he -- he was going to put a radio in the
17 truck, and he was going to take the --
18 that weekend off because he was going to
19 be a contractor. He wanted to spend some
20 time with -- as a vacation with his wife
21 to go somewhere before he would start his
22 contract to work full-time.
23 Q. And what date is this, if you

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1 can tell me?
2 A. It -- it was -- I think his
3 vehicle came May 3rd or May 5th, around
4 there, and then, he -- so, he took off
5 that weekend. And I thought the problem
6 was that it was just a system problem
7 that sometimes we have -- you know,
8 computers have systems that -- you can't
9 access everything. I tried to access it
10 again periodically, and I -- I couldn't
11 do it, and I didn't know what the problem
12 was.
13 A week went by, and I still
14 couldn't do it, and I had to go to
15 Chattanooga. I can't -- don't recall
16 what for. I went there, and I tried to
17 access it, and -- it there, and I
18 couldn't do it. And finally, I -- I -- I
19 found out that I -- I had only been
20 approved for one route and not two, and
21 it was a work area, and somehow I got two
22 vehicle numbers issued for the same
23 route.

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1 Q. Did you ever learn how it is
2 that two vehicles got issued to --
3 A. No, I did not.
4 Q. Okay. I'm sorry. I
5 interrupted you. Go ahead.
6 A. The -- since the -- the
7 company transitioned into new -- new CDAS
8 system to make everything more in line
9 to -- so everybody has -- can do things
10 easier, and everybody can see what's
11 approval process has been in place
12 instead of having to call everybody.
13 Q. CDAS, what did you say?
14 A. The CDAS system. That's --
15 Q. Spell it for --
16 A. Capital C, capital D, capital
17 A, capital S.
18 Q. Okay. I'm sorry. Go ahead.
19 A. And that's just -- everything
20 is in there, their application, their --
21 that -- that shows their expiration date
22 for their driver's license, all their
23 expiration date for their training, all

11 (Pages 41 to 44)

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1 their expiration dates for their
2 physical. All that's in there. Shows
3 whether their -- their background has
4 been approved or not. All that's in
5 there for each individual driver as well
6 as contractors.

7 **A.** Also, it has -- in order to
8 become a contractor, it has the vehicle
9 number and all that, and I -- I -- I was
10 not aware that -- I had only been
11 approved for one route because I had been
12 trying to get approved for two routes,
13 one for the abandoned route, one for the
14 new route. All of a sudden, I had two
15 vehicle numbers, and I thought I had it
16 done.

17 **Q.** Okay. And did you ever
18 indicate to Charlie Thornton that you
19 felt that he had the Wetumpka route?

20 **A.** Well, when I thought I had two
21 routes, approved, I -- and I knew Isaac
22 would take the Troy route, I was going to
23 work with Charlie to get the Wetumpka

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1 route, yes.

2 **Q.** Okay. And this is in May, and
3 anything else happen in May that we
4 haven't covered regarding Charlie?

5 **A.** Well -- the on --

6 **MR. SPOTSWOOD:** Object to the
7 form, but you can answer, if you can.

8 **Q.** It's a vague question, but --
9 do you need me to restate it somehow?

10 You know, as far as Charlie
11 getting a contract with FedEx Home
12 Delivery, did -- other than what you've
13 told us thus far, did anything else
14 happen that led you to believe that you
15 were going to be able to have another
16 contract to sign?

17 **A.** Well, I -- I thought it was
18 just a problem in the system. It wasn't
19 until Monday, and I think -- I can't -- I
20 don't recall the date. I think it was
21 May 9th, possibly, that I realized
22 that -- what the problem was, that I had
23 only been approved for one route. I

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1 called up Jeff White, the regional
2 engineer, told him the situation, told
3 him that I had Charlie here. He had the
4 van here. The route -- I thought I had
5 two routes approved, and he said, since
6 the van was already there, he was going
7 to do everything in his power to go ahead
8 and get it approved for a second route
9 since the van was already there.

10 **Q.** Okay.

11 **A.** And that I should just wait a
12 couple of days to see what -- what was
13 going on. I called Charlie up at home,
14 told him that I would not be able to
15 use -- let him start the following
16 morning on Tuesday, that we had talked
17 about and that I had to wait a couple of
18 days, that there was a problem, and I --
19 we were trying to get it corrected.

20 **Q.** Okay. Anything else in May,
21 then?

22 **MR. SPOTSWOOD:** Well, there
23 were many, many conversations about all

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1 this stuff, but -- Charlie and
2 management, I mean, if you want the
3 details, I think you need to ask for them
4 step-by-step.

5 **A.** Yeah, I mean, the -- the
6 whole -- the whole month of May -- the --
7 May is the end of our fiscal year. I had
8 all the fiscal year stuff. I had to get
9 all the customer service rides, driver
10 release audits. I had -- I was trying to
11 get a van for Charlie. Get -- get this
12 route approved. I had a lot of stuff
13 going on during that month. I was doing
14 everything in my power. Jeff White was
15 trying to get the route approved since
16 the van was already here. It was in --
17 Jeff White told me that he was confident
18 that he could get it approved.

19 He called me later on and said
20 that he was not going to be able to get
21 it approved, he had met with his bosses,
22 and they -- he had talked to people --
23 people in Pittsburgh and tried to get it

12 (Pages 45 to 48)

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1 approved, but they would not approve
2 another route, based on the number of
3 packages that we were delivering at the
4 time.

5 Q. Okay. Moving on to June. Did
6 you have any conversations with Charlie
7 Thornton in June?

8 A. I may have, but I don't
9 recall. I think I might have called him
10 a few times when we're -- when -- when we
11 needed a temp driver. Of those times, I
12 could never get hold of him, and I left
13 messages on his cell phone, but -- and I
14 think he called me back one time, but --
15 but he -- he was not available to work.

16 Q. Charlie said he was not
17 available to work?

18 A. He -- he didn't return my
19 phone call when I called him to see if he
20 could -- I didn't call him a day ahead of
21 time. Usually, I didn't know I was going
22 to need someone until that morning, and I
23 think they were, usually, like Saturday

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1 mornings or some -- something like that
2 when I called.

3 Q. Okay. How many times do you
4 remember calling Charlie and you --

5 A. In -- in June?

6 Q. (Nodding head affirmatively.)

7 A. Yes. There was probably just
8 two times, maybe, three at the most.
9 There were other times back in March and
10 April that I may have called.

11 Q. Okay. In June, did Charlie
12 ever ask you what the status of any
13 potential route might be?

14 A. No. I think he called one
15 time when they were having a -- when they
16 were having a -- an info session, I think
17 he called to see if we were hiring new
18 contractors, but I can't remember for
19 sure. I think he called, but I can't
20 remember for sure.

21 Q. Okay. The next question is
22 not specific to June.

23 A. Okay.

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1 Q. Did he -- at any time, whether
2 in telephone conversation or in person,
3 did he ever ask you what was he supposed
4 to do with the truck that had been
5 delivered to him if he wasn't working a
6 route?

7 A. Yes, he -- we talked about it
8 numerous times.

9 MR. SPOTSWOOD: Hang on.
10 (Off-the-record discussion.)

11 Q. (BY MR. NELMS:) Go ahead.

12 A. We talked numerous times once
13 the van arrived, and I -- I saw that he
14 was having problems. He was worried
15 about make -- getting that van payment,
16 and I was running into dead -- dead ends
17 trying to get everything approved, and I
18 told him that I would make his payment
19 for that month.

20 Q. Did you mean that you would
21 make it personally, or you would make
22 it --

23 A. I would make it personally.

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1 There was no way that the company would
2 do it.

3 Q. Okay. Why did you volunteer
4 to do that?

5 A. Because I felt bad about the
6 whole situation, and I was trying to help
7 him out.

8 Q. Okay. Did you ever at any
9 time tell Charlie that he was not going
10 to get a route?

11 A. Yes, I did.

12 Q. Okay. When was that?

13 A. It -- it was when Jeff White
14 told me that he -- he, wasn't going to be
15 able to approve -- get another route
16 approved, I -- I called Charlie, and I
17 told him that I was not going to be able
18 to get another route approved. Charlie
19 had asked what is he going to do?

20 And there were other -- other
21 ways to go -- to get a route, and one of
22 them, the Anniston terminal was looking
23 for a route, and it was suggested to me

13 (Pages 49 to 52)

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1 that he go work through the Anniston
2 terminal.
3 **Q.** Okay. What happened with
4 that?
5 **A.** Well, while -- due to my lack
6 of area knowledge, the initial
7 conversation, I told him where -- what
8 area he was do -- was doing, and the
9 county. I told him incorrectly, and --
10 then, later on, I had called him again,
11 and we -- I told him what area, since he
12 was interested in it, how it would work.
13 **And** I said, well, I know at some other
14 terminals, where there's a faraway route
15 from the terminal, that a contract -- the
16 contractor at the terminal would
17 generally go out with him with his
18 packages and the other contractor's
19 packages, and they would meet up and
20 split the packages up, and they both
21 would do their individual areas.
22 **And** I was told that the -- the
23 Ground contractor could take all the

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1 packages for the area that Charlie would
2 be doing in Alexander City in Tallapoosa
3 County, and -- so, he -- Charlie wouldn't
4 have to drive every single day to
5 Anniston. When Charlie under --
6 understood that, he wanted more
7 information, and I told him to call D. C.
8 Clark, who is the regional recruiter who
9 told me about it, who Jeff White told me
10 about it.
11 **So**, I know that he had talked
12 to them, and he -- he couldn't get in
13 contact with them. He wanted more
14 information. I didn't have any other
15 information. **So**, I gave him the terminal
16 manager at Anniston. I gave him the
17 Anniston's phone number.
18 **Q.** Did you -- I'm sorry. Go
19 ahead.
20 **A.** No one had told the manager at
21 Anniston because Charlie initially said,
22 no, he was not interested. The terminal
23 manager in Anniston didn't know anything

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1 about it. **So**, when Charlie had called,
2 Charlie told me that he said that he
3 didn't know anything about it and that it
4 would not work. I know that it -- it has
5 worked at other terminals. It -- but --
6 then, Charlie got upset because he -- the
7 manager didn't know anything about it.
8 **Q.** Well, you talked directly to
9 the manager in Anniston?
10 **A.** No, I did not.
11 **Q.** You did not?
12 **A.** I never talked to him.
13 **Q.** Okay. Did you have an
14 understanding as to -- so, someone told
15 you that the manager in Anniston said it
16 would not work?
17 **A.** Jeff White and the regional
18 engineer told me, and D. C. Clark, the --
19 the re -- the recruiter for the region
20 told me.
21 **Q.** Okay. But did they tell you
22 why it wouldn't work?
23 **A.** They told me that it would

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1 work. Charlie told me that the manager
2 in Anniston said it wouldn't work.
3 **Q.** Did anybody ever indicate that
4 the route that you were describing in
5 Tallapoosa and Alex City had already been
6 assigned to another person altogether?
7 **A.** The -- the -- Charlie told me
8 that the manager in Anniston had done
9 that already, that he was working on
10 getting it approved. I believe, when
11 Charlie's van got sold and bought, it was
12 the individual who was doing that route
13 in Anniston, that's where the van went
14 to, doing that area.
15 **MR. SPOTSWOOD:** Was that a
16 Ground route or a Home route?
17 **A.** Home Delivery route. It was a
18 Home Delivery van.
19 **Q.** Okay. And you've never come
20 to have an understanding as to why two
21 vehicle numbers were assigned?
22 **A.** Yeah, I -- to this day, I do
23 not understand how that happened.

14 (Pages 53 to 56)

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1 It's -- I -- I just -- just don't
2 understand how that happened.
3 MR. NELMS: Okay. I think,
4 Bob, I'm finished.
5 MR. SPOTSWOOD: Okay. I've
6 got some questions.
7 MR. NELMS: Well, if you'll --
8 let me do like we did last time.
9 MR. SPOTSWOOD: Yeah. Sure.
10 MR. NELMS: Let me talk to
11 Charlie real quick and see if he's got
12 some insight that I don't have, and we'll
13 come right back. If you need to make
14 your phone calls or whatever.
15 MR. SPOTSWOOD: Okay.
16 (Said deposition was in recess
17 at 2:58 p.m. until 3:14 p.m.,
18 after which the following
19 occurred:)
20 (Whereupon, Defendant's
21 Exhibit 1 was marked for
22 identification.)
23

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1 EXAMINATION BY MR. SPOTSWOOD:
2 Q. Kent, I'm going to show you a
3 document marked for identification as
4 Defendant's Exhibit 1. Can you tell me
5 what this is?
6 A. It's a PowerPoint presentation
7 that we generally use when we have --
8 con -- info sessions for possible drivers
9 and contractors.
10 Q. Okay. I know you weren't
11 present at the information session that
12 was -- that both Mr. Trott and Mr.
13 Thornton have talked about, so you don't
14 have any idea whether this was used at
15 that session. It does, however, contain
16 some information in here that I want to
17 ask you about.
18 There are some compute --
19 computations in here of an average yearly
20 gross for a driver. Can you tell me what
21 that figure is and whether or not that's
22 specific to the Montgomery area?
23 A. It's an average of the -- the

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1 contractors here in Montgomery. That's
2 the average -- what they make. So, it is
3 the average for the con -- what the
4 contractors here in Montgomery make.
5 MR. NELMS: All right. You
6 said it has lows. I think you started to
7 say it has lows --
8 A. Yeah, it has --
9 MR. NELMS: -- and highs, and
10 it's an average.
11 A. Yeah, it's just the average.
12 It has -- considers both the contractors
13 with low income and high income.
14 Q. And then, that's before
15 expenses, correct?
16 A. Correct.
17 Q. We get over here to common
18 expenses. This shows an average yearly
19 net of \$36,768. Can you tell me what
20 that is?
21 A. That's the average -- the
22 average net income that they would have
23 after their common expenses that they

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1 would have. Van payments, insurance,
2 business support package, fuel.
3 Q. All right. The last page of
4 this has a -- the caption, Getting
5 Started, and what is that?
6 A. Generally, that's the last
7 page that we show. Aft -- after we do
8 the slide presentations or what -- this
9 is what I used when I was in Chattanooga
10 a lot of times, when I was giving info
11 sessions. And this is what the recruiter
12 uses when they give information sessions.
13 They go throughout the slides, and then,
14 they ask -- if anyone's not interested,
15 they can leave, and then, with whatever
16 people's left, they -- they show the last
17 slide to -- to show people what they need
18 to do in order to get started to -- to
19 come work for FedEx.
20 And this -- that just says
21 how to -- what all they need to do.
22 They -- they need to have initial
23 orientation; come to the terminal; fill

15 (Pages 57 to 60)

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1 out a contractor information sheet;
2 reference check; get a letter of credit
3 for a vehicle. They conduct an
4 observation ride, schedule management
5 interview. We enter the contractor
6 information sheet into CDAS, so actually,
7 they would come into the terminal, fill
8 out an information sheet. We do an MVR
9 check, a DOT drug test and physical, the
10 Caliper.

11 Q. What's a Caliper?

12 A. A Caliper is -- is similar to
13 a psychological test that FedEx uses.
14 That's just something new that they've
15 done over the last eight or nine months
16 that they --

17 Q. Okay. So, that wouldn't have
18 been part of the process?

19 A. No, that -- that -- that is
20 something new that they've done. They --
21 they used to just give the Caliper test
22 to potential management candidates, and
23 now, they give it to -- to all potential

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1 contractors and anybody going into
2 management.

3 Q. Okay.

4 A. They suggest that the person
5 apply for a business license. They
6 complete a safe driving class, just like
7 Charlie took.

8 Q. That was the two-week --

9 A. That was --

10 Q. -- session?

11 A. -- the two-week training
12 class, and then, they do a week of
13 observation rides. Then, they read,
14 review and sign a contractor operation
15 agreement. They obtain a vehicle. Then,
16 they became a FedEx Home Delivery
17 contractor.

18 Q. Okay. All right. Now, did
19 you, at any point in time, give Charlie a
20 contract form, and I'm specifically
21 referring to Defendant's Exhibit V? Did
22 you give him this binder that contained
23 the P & D Contractor Business Guide for

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1 him to review?

2 A. Yes, I did. I gave -- I gave
3 it to him to read so he could take the
4 time to read it because, once we would
5 print the contract -- I wanted him to
6 know everything that was in it, if he had
7 any questions, so he could read through
8 it and ask questions ahead of time.

9 That was a copy of what a
10 contract is. That was an outdated copy.
11 So, when it would come time to print his
12 copy out and sign, that would be the most
13 up-to-date version of it, but this -- I
14 wanted him -- him to know everything that
15 he -- what was in the sys -- what was in
16 the contract. I don't like for people
17 just to sign at the last minute, well,
18 this is in the contract, and they -- they
19 don't want -- this is not what they want
20 to do. So, I wanted Charlie to make sure
21 that he knew what the contract was. So,
22 I gave him a copy of the contract to
23 read.

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1 Q. Now, was that before the van
2 was delivered?

3 A. Yes, I believe so, yes.

4 Q. I just want to clarify a few
5 things here. I think you've already
6 testified that you were, during this
7 period of time, the first six months, or
8 actually beginning in mid-February of
9 2005, the operations manager for FedEx
10 Home Delivery in Montgomery, correct?

11 A. Yes.

12 Q. And did you assume Stan
13 Trott's responsibilities for Home
14 Delivery? Was that one of the things you
15 were doing?

16 A. Yes.

17 Q. And you were responsible, once
18 you came onto the scene, for Mr.
19 Thornton's independent contractor
20 application process?

21 A. Correct.

22 Q. And you did, I think you've
23 already testified today, seek to get Mr.

16 (Pages 61 to 64)

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1 Thornton approved for an Elmore County
2 route in the spring of 2005?
3 **A.** That's correct.
4 **Q.** What was your reason for
5 thinking that there would be a route
6 available? And, specifically, I'm
7 inquiring about the situation with Mr.
8 Pettaway at that time.
9 **A.** Previous to my coming to
10 Montgomery, Mr. Pettaway, during peak
11 season, had failed to provide good
12 service. He had fired one of his
13 drivers, and from that point on, he was
14 unable to make service. The terminal was
15 having to use everybody they could to
16 help deliver in that area. Stan Trott
17 was having to have all his Ground temp
18 drivers work for Mr. Pettaway to help
19 deliver that area. They were having to
20 use -- the Ground's service manager was
21 having to go out and deliver in that
22 area. So, he wasn't maintaining his
23 service area.

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1 **Q.** During what period of time?
2 **A.** During peak season, which is
3 November, December of -- of the -- of
4 2004.
5 **Q.** And that's what you were told
6 by others?
7 **A.** That's what I was told by
8 others. That was one of the reasons why
9 they sent me down to Montgomery to get
10 the terminal cleaned up and operated
11 correctly because they were having a lot
12 of problems with it in operations.
13 **Q.** Okay. And did Pettaway have
14 two Elmore County routes at the time?
15 **A.** He -- Mr. Pettaway had two
16 routes. One was primarily Prattville and
17 some of the surrounding area around
18 Prattville. The second route had
19 Montgomery 36109, 1110, and Wetumpka,
20 Millbrook and Coosa and Elmore.
21 **Q.** Okay. Because of what you'd
22 heard about Mr. Pettaway's job
23 performance, what did you expect to

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1 happen at that time with respect to his
2 area?
3 **A.** I expected at that --
4 initially, I expected the area to be
5 split off and get a second route
6 approved. So, that's why I was trying to
7 get two routes approved.
8 **Q.** A new route in that area?
9 **A.** Yes.
10 **Q.** Did you believe, too, that Mr.
11 Pettaway's job was in jeopardy when you
12 first got onto the scene?
13 **A.** Yes, I did. I was -- I was
14 told by numerous people that Mr. Pettaway
15 didn't provide service, that my -- the
16 upper bosses wanted to see -- see
17 Derrick's file to -- to determine --
18 to -- Derrick is his first name, Mr.
19 Pettaway's file, to see if we can
20 terminate his contract.
21 **Q.** And how did he actually wind
22 up performing in 2005?
23 **A.** Once I got there, he was -- he

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1 was running a supplemental van every day
2 and --
3 **Q.** What does that mean?
4 **A.** In other words, it wasn't --
5 he wasn't -- he didn't have a third
6 contracted route. He had two routes. He
7 was running three routes every day.
8 He -- he was spending money on a -- on a
9 van and not getting compensated as an
10 additional contractor route. He was just
11 getting compensated for the number of
12 packages, the number of stops he was
13 delivering.
14 **A.** And once I got there, at
15 first, he was struggling because he just
16 had new drivers in the area, and as I got
17 there, they started to learn the area,
18 and I also spent a lot of time fixing the
19 mapping system in the VRP computer, which
20 was in bad shape, and I had rearranged it
21 and fixed it. So, ever -- everything was
22 being plotted correctly. His drivers
23 were doing better, and he was providing

17 (Pages 65 to 68)

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1 some very good service from that point
2 on.
3 Q. Okay. So, was he in pretty
4 good shape, as of the end of March, so
5 that you didn't think his job or
6 territory was in jeopardy?
7 A. He was improve --
8 Q. I'm sorry, not job -- his
9 contract in jeopardy.
10 A. He was improving tremendously
11 by the time the end of March came. If he
12 would not have been running a
13 supplemental, he -- he would have been in
14 trouble.
15 Q. Okay. But, in any event, at
16 that point in time, you thought that an
17 additional route was a good business move
18 for the Elmore County area?
19 A. Yes, I did.
20 Q. And that's what you were
21 trying to get done?
22 A. Yes, I did.
23 Q. And I think you -- it's fair

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1 to summarize your testimony. You correct
2 me if I'm wrong, but as -- as the process
3 progressed in connection with your
4 efforts to get a route approved, you ran
5 into some difficulties?
6 A. Yes.
7 Q. And you initially thought the
8 delay was due to problems with processing
9 the paperwork?
10 A. Initially, I thought it was
11 processing the paperwork con --
12 concerning mainly the abandoned route
13 back in December. That was putting a
14 hold on the whole system, and that was
15 preventing me from moving forward in any
16 direction with -- with that abandoned
17 route not having been terminated
18 correctly.
19 Q. All right. And that's the
20 Troy route?
21 A. That was the Troy route.
22 Q. After the van arrived, when
23 that happened, you thought that that

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1 signaled a route was available, correct?
2 A. Yes, I did.
3 Q. And you later learned that was
4 not the case?
5 A. Yes -- yes, I did.
6 Q. And in connection with
7 investigating how this happened, did you
8 later see some paperwork that indicated
9 that you had placed into the computer the
10 same work ID number for the Troy route as
11 you had that ultimately went to --
12 A. Charlie? Yes.
13 Q. No, no, the Troy route. The
14 Troy route that ultimately went to --
15 A. Isaac Scott?
16 Q. Isaac Scott.
17 A. (Nodding head affirmatively.)
18 Q. Did you -- did you determine
19 that you had -- when you were seeking the
20 contractor approval, put in the same work
21 ID number for both Mr. Thornton and Mr.
22 Scott in connection with those
23 applications?

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1 A. Later on -- later on, way past
2 the time when the van arrived, I did find
3 that to be a problem, yes.
4 Q. And that once you had printed
5 out a contract for Isaac Scott, then,
6 there was no more --
7 A. It was the --
8 Q. -- contract available?
9 A. The system locked me out.
10 That's why I could not print another
11 contract because the contract was already
12 signed for that work area.
13 Q. Okay. So, is it fair to say
14 that the mistake was yours, that --
15 A. Yes.
16 Q. -- that you made that mistake?
17 A. Yes.
18 Q. Did you intend to make that
19 mistake?
20 A. No, I did not.
21 Q. Did you even understand that
22 you had made that mistake until long
23 after the van had been delivered?

18 (Pages 69 to 72)

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1 A. I'm not sure what you mean.
2 Q. Then, when did you finally
3 figure out that that's what had happened
4 here?
5 A. I think towards the latter
6 part of May, I figured that out.
7 Initially, when I first thought --
8 figured out that there was a problem, I
9 didn't know that was the problem. I --
10 I -- I didn't understand what the problem
11 was. I thought I had two routes
12 approved. Because I had two vehicles'
13 numbers, I thought I had two routes
14 approved.
15 Q. Could Mr. Thornton become a
16 contractor without signing an operating
17 agreement?
18 A. No.
19 Q. Was it Jeff White who told you
20 that there was not enough volume,
21 ultimately, to justify a new Elmore
22 County route?
23 A. That's correct.

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1 Q. So, was there any Montgomery
2 area route available for Mr. Thornton or
3 anyone else after the route in Troy had
4 been awarded?
5 A. Not at that time, no.
6 Q. Did Mr. Thornton ever tell you
7 that he was recording his telephone
8 conversations with you in the latter part
9 of this period when you and he were
10 talking with one another?
11 A. No, he did not.
12 Q. Did you have conversations
13 with him after May the 17th that were not
14 recorded, according to the statements
15 that we've seen in his deposition?
16 A. That is correct.
17 Q. And because the contract never
18 came up on the computer system,
19 obviously, Mr. Thornton was not able to
20 sign a contract?
21 A. That's correct.
22 Q. Did you feel, based on what
23 you saw of performances between Isaac

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1 Scott -- I'm talking about performance,
2 experience on the route, and so forth,
3 did you feel like you made the right
4 choice in giving Isaac Scott the Troy
5 route --
6 A. Yes I did.
7 Q. -- over Mr. Thornton?
8 A. Yes, I did.
9 Q. Did you have any discussions
10 with Mr. Thornton about his interests, if
11 any, in working as a temporary driver?
12 A. Yes, I did. I -- I told -- I
13 asked him a -- a few times to work as a
14 temporary driver when -- back in --
15 towards -- back in the middle of March,
16 the end of March, I had called him up to
17 see if he was interested as working as a
18 temp driver, but he told me he was not.
19 He just wanted to become a contractor.
20 He wanted to get everything running as
21 quickly as possible. He wanted to get in
22 the van and start delivering packages as
23 a contractor.

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1 Q. Did you say anything to him
2 about the potential benefits, if any, of
3 working as a temp driver?
4 A. Other than learning the area,
5 no, no. But I -- I -- at the time, I did
6 not -- until listening to Mr. Thornton
7 give his dep -- deposition, I didn't
8 realize that Jermaine Wilson had told --
9 that it was a bad idea for him to be a
10 temp driver.
11 Q. Do you agree with that?
12 A. No, I think it's entirely the
13 opposite. I do agree that temp drivers
14 usually get -- get the brunt end of
15 things, but in order to become a
16 contractor, if you're a temp driver, it
17 shows that the terminal needs a
18 contractor in that area, and it's easier
19 to -- to get qualified for a route, and
20 if you have that training, it -- it
21 works, but --
22 Q. It certainly worked for Isaac
23 Scott, didn't it?

19 (Pages 73 to 76)

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1 A. Yes, it did.
2 Q. What discussions did you have
3 with your superiors about the possibility
4 of an Anniston route? You mentioned
5 something of this in your earlier
6 testimony. I just want to be clear about
7 it.
8 A. When -- when it -- when Jeff
9 White told me that they weren't going to
10 be able to approve a route for
11 Montgomery, we were looking all -- at
12 alternatives for -- something for Charlie
13 to do, and one of the alternatives was to
14 be a contractor at another terminal, and
15 at the time, the Anniston terminal needed
16 a contractor or may -- may have needed
17 more than one contractor, I'm not sure.
18 And it -- Jeff White and D. C. Clark told
19 me that it would be possible for Charlie
20 to become a contractor in that area, and
21 he could cover the area -- the county
22 that runs next to Elmore County.
23 Q. That's Tallapoosa County?

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1 A. That's correct.
2 Q. All right. And you talked to
3 Charlie about that. I think you said
4 initially, and you misstated it and said
5 it was Tuscaloosa County?
6 A. Well, I said it was -- would
7 be out of Tuscaloosa County, and I did
8 tell him the wrong county.
9 Q. Did you clarify that and
10 correct that later?
11 A. At a latt -- latter date, yes,
12 I did.
13 Q. Directly to Charlie?
14 A. Yes.
15 Q. And told him it would be
16 Tallapoosa County?
17 A. Yes.
18 Q. Okay.
19 A. And that's when he called. He
20 wanted more information, so, that's when
21 I -- I told -- I told him to talk to Jeff
22 White and D. C. Clark. And ultimately,
23 he was unable to get in contact with

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1 them, and I gave him the Anniston
2 manager's phone number. And he called
3 the Anniston manager, and the Anniston
4 manager didn't know anything about it.
5 Q. Well, if Jeff White, given his
6 position, thought it was a good idea for
7 there -- for this route to be given to
8 Charlie in Tallapoosa County, is he the
9 one with the decision-making authority to
10 make that happen?
11 A. If Charlie wanted to do it, he
12 could have done it, yes.
13 Q. Did you, in any of your
14 discussions with Mr. Thornton, ever have
15 any intention whatsoever to deceive him
16 or trick him or mislead him in any way?
17 A. No, sir.
18 Q. When you told Charlie, after
19 the van was approved, that you thought he
20 was going to get the Elmore route, did
21 you believe at that time that he was
22 going to get the route?
23 A. When I got van approval, I

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1 thought that I was going to have two
2 routes. That's -- so, that's what --
3 yes, I did.
4 Q. And then, after you learned
5 that there was a mistake -- really,
6 before then, you were doing everything
7 you could to make sure that he got a
8 route --
9 A. That's correct.
10 Q. -- were you not?
11 A. Yes.
12 Q. And even after it appeared
13 that he didn't have a route, you offer,
14 and he confirmed that offer in a letter
15 to you, to pay the first payment on his
16 truck until all this could get
17 straightened out?
18 A. That's correct.
19 Q. And did you ever say anything
20 to Charlie that was -- that, at the time
21 you said it, you knew what you were
22 telling him was wrong?
23 A. No.

20 (Pages 77 to 80)

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1 Q. Did you ever have any
2 intention to injure him or cause him any
3 harm or heartache in any way?
4 A. No, I'm not that type of
5 person.
6 Q. There are a couple of
7 documents I want to run by you here. Can
8 you tell me -- I'm looking at document
9 FXG 0000-69, which is a part of
10 Defendant's Exhibit C to Mr. Thornton's
11 deposition. Can you tell me what this
12 is?
13 A. It's -- it's a e-mail to me
14 from Lori Beymer, who's in charge of
15 releasing all the vehicles up in
16 Pittsburgh, stating that they've released
17 the vehicle and dispatched it to the
18 terminal for -- to be released to the
19 contractor.
20 MR. NELMS: That's Lori
21 Beymer?
22 A. Beymer.
23 MR. NELMS: B-E-Y-M-E-R?

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1 A. Yes.
2 Q. Okay. And the next document
3 here, document last two digits 70. Can
4 you tell me what that is?
5 A. When the vehicle arrived at
6 the terminal, I get a -- Charlie and I
7 get together, inspected the van to make
8 sure that it was acceptable, it had
9 everything that it was supposed to have
10 and make sure everything was working.
11 Q. Okay. And that -- the date of
12 the inspection is shown as --
13 A. May 3rd.
14 Q. All right. And that's the
15 date it was delivered, correct?
16 A. Yes.
17 Q. And that's your signature on
18 the second page --
19 A. Yes.
20 Q. -- page 71?
21 A. Yes.
22 Q. Let's go off the record a
23 second.

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1 (Off-the-record discussion.)
2 Q. (BY MR. SPOTSWOOD:)
3 Defendant's Exhibit M, can you tell me
4 what this is? Actually, I'm turning
5 first to the second page of it.
6 A. Well, per the conversation
7 that I had with Charlie, I told him that
8 I would make his van payment since I was
9 having a hard time getting his van
10 approved -- his -- his contract approved,
11 and he was worried about making his van
12 payment, and I told him that I would make
13 it.
14 Then, he wrote a letter -- I
15 told him just to send me the invoice, and
16 that -- that I would pay it on -- for
17 that first month, and he wrote a letter
18 to me going over that -- my agreement to
19 make that payment.
20 Q. And is this that letter?
21 A. That's the letter that -- on
22 the next page is --
23 Q. And, then, the first -- the

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1 page -- page KG 0000-01 -- that's the --
2 A. That was the invoice.
3 Q. That was the invoice?
4 A. Yeah.
5 Q. All right. And what did you
6 do when -- and then, the last page --
7 0003, rather, gives the phone number for
8 Stearns?
9 A. Yes.
10 Q. Did you call Stearns?
11 A. Yes, I did. I called Stearns
12 when it was due to make the payment, to
13 go make the payment.
14 Q. How were you going to make the
15 payment?
16 A. I was going to pay for it out
17 of my personal checking account.
18 Q. Okay. Were you going to use a
19 debit card, or how were you going to pay?
20 A. I was going to use my Visa
21 check -- debit card, yeah, to make the
22 payment. And when I called Stearns'
23 bank, they said that the van is getting

21 (Pages 81 to 84)

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1 ready to be sold, that it's not -- to
2 wait a few days, that it would not be
3 considered late. I called back a few
4 days later. The van had been sold, and
5 so, it was out of my hands. I didn't --
6 it -- the van was paid off. So, I -- I
7 did not make a payment.

8 MR. SPOTSWOOD: I don't have
9 anything else. Thank you very much.

10 REEXAMINATION BY MR. NELMS:

11 Q. One quick question. You had
12 stated that you had asked Charlie to work
13 as a temp, is that correct?

14 A. Yes.

15 Q. Temp driver?

16 A. Yes.

17 Q. Okay. Would that be filling
18 in for drivers who couldn't do their
19 route on any specific day?

20 A. Right. Well, at the time, I
21 did -- I was trying to cover the
22 abandoned route, the Troy route. So,
23

1 Q. -- in the Troy area --

2 A. Yes, he did.

3 Q. -- during that time period?

4 A. Yes, he did. Charlie, also,
5 did work, but he -- he had stated to me
6 that he was more interested in becoming a
7 contractor and did not want to run as a
8 temp. He wanted to know what I could do
9 to help him, what he needed to do or --
10 well, to -- to get his paperwork
11 processed so he could become a
12 contractor.

13 Q. Okay. Did you ever -- just so
14 I understand it, now: Did you ever ask
15 Charlie to work, and he refused to work?

16 A. He told me he did not want to
17 be a temp driver, that he wanted to be a
18 contractor, yes.

19 Q. Well, did you ever
20 specifically ask him to work on a
21 particular day, and he refused to work?

22 A. Yes.

23 Q. Okay.

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1 Isaac Scott was running it every day, and
2 I could have used -- I could have used
3 either Charlie or Isaac or whatever temp
4 I had at the time to run that route.

5 Q. Okay. I asked you earlier how
6 many times you had asked Charlie to fill
7 in as a temp, and you said two, maybe,
8 three.

9 A. That was --

10 MR. SPOTSWOOD: That was in
11 June.

12 A. That was in June. In March, I
13 had asked him a -- a few times.

14 Q. Okay.

15 A. Because Isaac had called in
16 sick and had a -- had injured his eye
17 when he was trying to put his contacts
18 in, and I -- and I ended up having to go
19 out -- deliver in that area myself.

20 Q. But correct me. But you also
21 said that Charlie did make a number of
22 deliveries --

23 A. Yes.

1 A. I have asked him to work a
2 couple of times on a Saturday, and he
3 said -- either I called him up on his
4 cell phone, he didn't answer his cell
5 phone, or he would call me back way past
6 time where it was conceivable for him to
7 do the route, and he told me he -- you
8 know, he would call me back at 10:00 and
9 could not do it. He had made other
10 plans.

11 Q. Okay.

12 A. We don't like to have
13 management go out and deliver. So, we do
14 everything we can to -- to get the routes
15 covered. If I needed to have a temp
16 driver, I -- any -- any time, if I have
17 didn't have someone, I would have called
18 him.

19 Q. Okay. And how many times
20 total?

21 A. I -- I don't recall. Isaac
22 was pretty dependable most of the time;
23 just when he injured his eye with his

22 (Pages 85 to 88)

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1 contact that he was having a problem, and
2 I think, then, he was sick one time,
3 and --

4 Q. I'm sorry. Denny?

5 A. Then, he was sick.

6 Q. Oh, "then he." Oh, I'm sorry.

7 A. So -- oh, yeah, I was try --

8 just trying to get the route covered and
9 see if -- if any temp driver could work
10 that area. And, at the time, I only had
11 Isaac Scott, and I only had Charlie.

12 Those were the only two temps I had.

13 Q. Okay. Did you ever tell
14 Charlie you wanted him to come in and
15 work for two hours on a Saturday?

16 A. I don't recall.

17 Q. Okay. Was there ever any
18 indication when you asked him to work
19 these --

20 A. I think I did. I think --
21 I'm -- I don't -- I'm not sure if it was
22 a Saturday. I think there was numerous
23 times where -- at the time when I first

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1 started there, Ground was servicing 36116
2 zip code, and there were numerous times
3 when the contractors for Ground that --
4 decided that they weren't going to
5 service a Home Delivery package they
6 left. And I may have called him, but I
7 don't recall for sure. If it was just
8 for a couple of hours, that would have
9 been the only time that -- I mean, we --
10 we usually -- we want a temp driver to be
11 productive and to work more than two
12 hours.

13 Q. Okay.

14 A. But -- but if -- I may have,
15 but I don't -- I don't remember.

16 Q. Did you ever have Mr. Thornton
17 work the 36116 zip code area?

18 A. When he was in training,
19 Jermaine and him -- they did the 36116
20 zip -- area code one time, I think. I --
21 I don't recall.

22 Q. All right.

23 A. I'd have -- I think it's -- in

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1 part of the records, there's all the
2 training that Jermaine did with him.

3 Q. Okay. Did you ever ask
4 Charlie to directly contact the manager
5 in Anniston to ask him about the alleged
6 open route?

7 A. Yes, I did.

8 Q. Okay. Did you give him -- did
9 you give Charlie that manager's name and
10 telephone number?

11 A. Yes, I did.

12 Q. Okay. And had you talked to
13 the manager at Anniston yourself about --

14 A. No, I did not.

15 Q. Okay. And to the best of your
16 knowledge, had Jeff White talked directly
17 to that manager?

18 A. Well, from the conversation
19 that Charlie told me that the manager
20 didn't know anything about it, I would
21 assume that Jeff White did not talk to
22 that manager about it.

23 Q. Okay. Did you have any way of

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1 knowing that the route, that you thought
2 was open and Jeff White thought was open
3 that Charlie could take, had actually
4 been promised to yet another person?

5 A. At the time, I did not know
6 that, but according to the conversation
7 that Charlie told me, it -- that's what
8 Charlie said the manager had said.

9 Q. Okay. So, you don't have any
10 way to dispute that?

11 A. No. I -- I did not talk to
12 that manager. I didn't know what that
13 manager had promised someone else, no.

14 Q. Okay. When Charlie -- if he
15 worked one of these temp driver
16 positions, how would he be compensated?

17 A. A temp driver would get
18 compensated through the temp agency. The
19 temp agency would pay -- he'd be a
20 employee of the temp agency. So, he
21 would get compensated through the temp
22 agency.

23 Q. What agency is that?

23 (Pages 89 to 92)

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1 A. At the time, it was Adecco.
2 Q. Adecco?
3 A. Adecco, A-D-E-C-C-O.
4 Q. And do you have any idea the
5 amount of pay that a temp driver would
6 get at this time in '05?
7 A. The temp drivers got paid an
8 hourly rate. Usually, they work nine
9 hours a day, and a lot of times, if they
10 would work less, I would still put them
11 in for nine hours. Basically, I think it
12 totaled out to like \$79 a day.
13 Q. Okay.
14 A. That would be their gross.
15 So, they -- they'd have taxes and
16 everything taken out since they'd be an
17 employee of the temp agency.
18 MR. NELMS: Okay. That's all
19 I got.
20 MR. SPOTSWOOD: I think we're
21 good.
22
23

FURTHER THE DEPONENT SAITH NOT

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1 (Said deposition was concluded
2 at 3:50 p.m. on the 12th day
3 of April, 2006.)
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CERTIFICATE

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2
3
4 STATE OF ALABAMA)
5 JEFFERSON COUNTY)
6

7 I hereby certify that the
8 above and foregoing deposition was taken
9 down by me in stenotypy, and the
10 questions and answers thereto were
11 reduced to typewriting under my
12 supervision, and that the foregoing
13 represents a true and correct transcript
14 of the deposition given by said witness
15 upon said hearing.
16

17 I further certify that I am
18 neither of counsel nor of kin to the
19 parties to the action, nor am I in
20 anywise interested in the result of said
21 cause.
22

23 COMMISSIONER - NOTARY PUBLIC

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